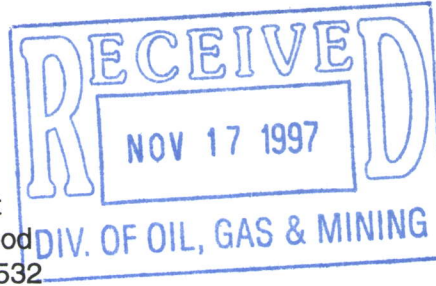


5/019/030



WC
9/30/97

Moab District
82 East Dogwood
Moab, Utah 84532

3802
(UT-060)

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Certified No. Z 160 737 278

OCT - 2 1997

Mr. Ron Pene
Pene Mining
P. O. Box 4017
Grand Junction, Colorado 81502

Re: Notice of Noncompliance with Approved Plan of Operations

Dear Mr. Pene:

On July 1, 1997, you were issued a notice of noncompliance for several different violations of Federal regulations including conducting operations inside the Westwater Wilderness Study Area (WWSA) which were not in compliance with your approved plan of operations. After you were informed of the noncompliance you had moved your operations to a portion of the claim group which you contend is located outside of the Westwater Wilderness Study Area (WWSA) and were therefore operating under a notice in accordance with the 3809 regulations.

The area you moved your operations to is in the extreme northeast corner of the claim group on the Pussycat No. 6 placer claim. In the area you were located, the WWSA boundary is also the boundary between public land and private land. At the time you initiated operations in this claim, this boundary line was not established on the ground and the BLM could not be sure if your activities were inside the WWSA or on private land. Therefore, the Moab District requested a cadastral survey of the WWSA boundary for the area in question. This survey was conducted August 19-21, 1997, and although it is not yet formally complete, it is sufficient to establish an approximate boundary.

Based on the preliminary results of the survey, it is clear that the operations you have conducted on the Pussycat No. 6 placer in the northeast corner of the claim group are on public lands. Furthermore, according to the legislative map prepared for submission of the wilderness inventory to the United States Congress, these public lands are located within the WWSA. We should point out that even if a portion of the mining claim had been outside the WWSA, a plan of operations under 43 CFR 3802 would still be required.

The only activities you have approval to conduct within the WWSA are those described in your supplemental plan of operations dated May 17, 1996, and approved by BLM on June 4, 1996. The approved plan is strictly limited to hand sampling and does not include the use of mechanized equipment off of existing ways. Your activity in the northeast portion of the claim group has consisted of extensive surface disturbance conducted with a front end loader and a backhoe and includes road construction, excavations and construction of an impoundment. Therefore you are in noncompliance with your approved plan.

In order to correct the noncompliance you must immediately cease all activity other than that addressed in your May 17, 1996 plan and approved by BLM on June 4, 1996. Within 15 days of receipt of this noncompliance you must submit a reclamation plan to the Moab District Office which details how you will reclaim the areas of disturbance. The reclamation needs to be completed by late October or early November to take advantage of seasonal conditions. The plan should include a proposed schedule for when the work will be accomplished and what equipment and methods will be used to restore the disturbed areas to their pre-existing conditions. If you do not comply with this notice, BLM will undertake the reclamation and you will be billed for the cost.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions or require clarification of information contained in this letter or the enclosures, call Bill Stringer at (801) 259-2185.

Sincerely,

/s/ Katherine Kitchell

District Manager

Enclosure:
Form 1842-1, (1 pp)

BSTRINGER:sjj:09/30/97 wp:typing_out/NNC.090497A